

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Marie Bendix HANSEN *et al.*  
Title: ***METHOD FOR HIGH THROUGHPUT VOLUMES IN THE  
FRACTIONATION OF BIO-MOLECULES BY  
CHROMATOGRAPHIC SYSTEMS***  
Appl. No.: 10/548,403  
371(c) Date: 7/27/06  
Examiner: Alexander D. Kim  
Art Unit: 1656  
Confirmation  
Number: 7935

**RESPONSE TO ELECTION REQUIREMENT**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the election-of-species requirement detailed in an Office Action mailed October 15, 2007, Applicant elects the following, with traverse, for initial examination: lactoferrin (claim 7) as a protein bio-molecule (claim 6); and milk (claim 9) as a body fluid that is a bio-molecule-containing fluid (claim 8). Claims 1-15 read on the selected species.

Applicant traverses because this requirement violates PTO rules on point. In particular, MPEP § 803.02 states that, for a “Markush-type claim,”

If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all of the members of the Markush group..., even though they may be directed to independent and distinct inventions.

Further, “when the Markush group occurs in a claim reciting a process,” as is the case here, then “it is sufficient if the members of the group are disclosed in the specification to possess


at least one property in common which is responsible for their function in the claimed relationship, and it is clear from their very nature or from the prior art that all of them possess this property. *Id.*

There is no showing on the record whether or why search and examination of all of the alleged species might present a "serious burden." Indeed, applicant submits that no such burden pertains, since dealing with all species together in this context would entail nothing more than a consideration of information on industrial-scale, adsorptive chromatography, the technical field most relevant to the claimed process. By the same token, amenability to fractionation via absorptive chromatography is a property that, as the specification discloses (see, e.g., paragraphs 0042 – 0046 of the published application), the alleged species by their very nature possess in common. See also the discussion in paragraph 0006 of a range of conventional "biomolecule target[s]" in the technical field, including "an enzyme or other protein or peptide, a polynucleotide, a viral particle or other easily degradable substance."

Applicant submits, therefore, that the pending election-of-species requirement should be withdrawn and all of the alleged species examined together. In addition, the Commissioner is authorized to charge any additional fees, which may be required under 37 CFR §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account.

Respectfully submitted,

Date 14 December 2007

By 

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5404  
Facsimile: (202) 672-5399

Stephen A. Bent  
Attorney for Applicant  
Registration No. 29,768